IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 11149 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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KIRIT M. PATEL & ORS. - Petitioner(s)
Versus
STATE OF GUJARAT & ANR. - Respondent(s)

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Appearance :

Shri G.K. Mehta for Mr. N.K. Majmudar for Petitioner(s) : 1 - 3.
Shri L.R. Pujari, Asst. Government Pleader for Respondent(s) : 1 - 2.
None for Respondent No.3 though name of Shri Manoj Popat is shown in the Daily Board.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/12/2006

ORAL JUDGMENT

1. The short facts necessary for disposal of the present matter are that one Amadra Village Panchayat, somewhere in the year 1956-57, was divided into Amadra and Chhatrali villages, the properties were divided

amongst the said Panchayats. It is the allegation of the petitioners that Survey No.78 of Village - Nani Amadra was given to the said Nani Amadra Gram Panchayat for cremation purpose and Survey No.4/1 of Village - Chhatrali was given for the same purpose to Chhatrali village. According to them, somewhere in the year 1992, Nani Amadra Gram Panchayat decided to construct a temple on some part of Survey No.78 and a resolution to that effect was passed. Certain villagers of Chhatrali village made an application to respondent No.2 and stopped the petitioners from developing the temple. The respondent No.2, thereafter, made certain inquiry and passed an order on 2nd July, 1992 directing resumption of Survey No.78, admeasuring 0.22 Gunthas of land, in favour of the State Government. Being aggrieved by the said order, the petitioners are before this Court.

2. The petitioners say and submit that Chhatrali village people have their own crematorium and apart from that, Survey No.78 is situate at one and half kilometers away from Chhatrali village. It is also their case that Survey No.78 was not being used as a cremation ground, but, some other land donated by generous persons to the Panchayat was being used as a cremation ground.

3. The respondent-State has filed an affidavit submitting, *inter alia*, that to avoid any conflict between the villagers/residents of two village panchayats, the State has taken over the management of Survey No.78 and allowed the residents of all such villages to cremate the dead.

4. Shri Mehta, learned Counsel for the petitioners, submits that the order dated 2nd July, 1992 proceeds on certain assumptions and not on the basis of the ground facts. His submission is that no order has ever been supplied to the petitioners nor any reference to such order is made in the impugned order dated 2nd July, 1992 to convey that Survey No.78 was kept reserved as a cremation ground to be jointly used by the residents of both the Panchayats. His submission is that unless residents of other villages have a right to cremate in Survey No.78, simply on their objection the land could not be resumed in favour of the State.

5. Shri L.R. Pujari, learned Assistant Government Pleader for the State, on the other hand, submits that from the very first paragraph of the order dated 2nd July, 1992 (Annexure-D), it would appear that the Collector had made observations that the land bearing Survey No.78 was

being used by the residents of different villages. He submits that to avoid any conflict or to avoid bad blood between the residents of different villages, the Government has taken over the management of the property.

6. Paragraph-1 of Annexure-D does nowhere say that at the time the Panchayat was divided into two, the land falling under Survey No.78 was kept for joint user by the residents of Amadra Panchayat and Chhatrali Panchayat. The order simply says that both the villages Nani Amadra and Chhatrali are adjoining villages and the residents of the said villages were using the land bearing Survey No.78 as cremation ground. If because of convenience, the land was being used by the residents of nearby villages, then, the same would not create a right in their favour to say that they have natural right or statutory right under the provisions of law. A local authority is obliged to reserve a piece of land for cremation, graveyard, etc. Reservation of some parcel of land in some village for purposes of cremation would not mean that any person can interfere in the management of the said local authority only on the ground that because of their convenience, they were being allowed to or they were using the place for cremation.

7. If there was any such order passed either in the year 1956-57, when Amadra Panchayat was bifurcated or subsequent thereto, then, the said order ought to have been supplied to the petitioners. In absence of details of such document or reservation in favour of all concerned or in favour of residents of other villages, the statement contained in paragraph-1 cannot be taken to be gospel truth.

8. The order contained in Annexure-D simply proceeds on the ground that if the management is not taken over by the Government, it would lead to disharmony.

9. When a property is settled in favour of a private person, local body or any legal authority, then, they hold the property in their own rights. If such rights are to be cancelled or withdrawn, then, appropriate notice has to be given to such person, their lapses are to be brought to their notice and the documents on which the State proposes to rely should also be supplied to such a party.

10. In the present case, the respondent-Collector did not observe any of such requirements. The Order dated

2nd July, 1992 (Annexure-D) shows non-application of mind and proceeds on the belief that the property was kept reserved for the residents of different villages. The order is hereby quashed.

11. The matter is sent back to the Collector to decide the matter afresh in accordance with law keeping in mind the observations made by this Court. Rule is discharged. No costs.

[R.S.Garg, J.]

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